

## REMARKS

Claims 1-28 are pending in the application, and claims 1-28 have been rejected. Claims 1, 4, 7, 18, 19, 21, 27 and 28 have been amended, and claims 2 and 12 have been canceled. No new matter has been added. Reconsideration is requested.

Claims 18, 19, 27 and 28 were objected to because "bioasorable" should rather be "bioabsorbable." This typographical error has been corrected in claims 18, 19, 27 and 28.

Examiner states that claim 4 has been rejected under 35 U.S.C. § 112, second paragraph, because "the elongate body" and "the acquisition apparatus" in lines 1-2 do not have proper antecedent basis. Applicant has amended claim 4 so that it now depends from claim 3, giving "elongate body" proper antecedent basis. Also, claim 4 now recites "the first longitudinal axis," which has proper antecedent basis found in claim 1.

Claims 1-15, 20-24 and 26 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Deem (U.S. Pat. No. 6,558,400). In response to this rejection, claim 1 has been amended by inserting the limitation of claim 2, so that claim 1 now recites that "at least one of the acquisition members is movable relative to the first longitudinal axis between a delivery configuration and a deployment configuration." In Deem, stapling devices 170, 190, and 200 as shown in FIGS. 9A through 11B do not, as the Examiner states, contain an acquisition member being movable relative to the first longitudinal axis between a delivery configuration and a deployment configuration, as now recited by amended claim 1. In Deem, vacuum ports or slots (178, 194, 216) are disposed on the stapling units on either side of a septum (184, 196, 212) and the sides of the stapling unit separated by the septum are stationary, and not movable relative to the first longitudinal axis as recited in claim 1. See col. 11, line 3 through col. 12, line 59 of Deem. Since all of the limitations of amended claim 1 are not disclosed in Deem, claims 1-6 are allowable over Deem.

Independent claim 7 has been amended by adding the limitation of claim 12, so that claim 7 now recites that "the tissue acquisition member is movable relative to the longitudinal axis between a delivery configuration and a deployment configuration." For the same reasons as

discussed above, Deem does not disclose this limitation, and therefore, claims 7 through 20 are allowable over Deem.

Independent claim 21 has been amended to now recite that "the vacuum chamber is pivotable relative to the longitudinal axis between a delivery configuration and a deployment configuration." Support for this amendment can be found in at least paragraphs [061] and [062] of the current application. Deem also does not disclose a vacuum chamber being pivotable relative to the longitudinal axis between a delivery configuration and a deployment configuration, and therefore, claims 21-28 also are allowable over Deem.

With regard to dependent claims 13-15 and 22-24, Examiner states that Deem discloses an expandable element 52. However, claim 13 and 22 recite that the gastroplasty device as claimed further includes an expandable element, whereas Deem in FIGS 3A-3C discloses a bougie 40 that includes a distal balloon 52 and is used to secure the bougie device, and not the stapling devices. Examiner also cites FIG. 17A of Deem, which shows a vacuum tube 320 and not an expandable element. For these additional reasons, dependent claims 13-15 and 22-24 are patentable over Deem.

Claims 16, 18-19, 25 and 27-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Deem. As discussed above, Deem does not disclose all of the limitations of independent claims 7 and 22, and therefore dependent claims 16, 18-19, 25 and 27-28 are also allowable over Deem.

Claim 17 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Deem as applied to claim 11, and further in view of Schurr (U.S. Pub. No. 20020082621). Claim 17 recites "the tissue acquisition member is pivotally movable relative to the septum." Examiner admits Deem does not disclose the tissue acquisition member being pivotally movable relative to the septum. Examiner states that "Schurr teaches a tissue acquisition member 200 being pivotally movable relative to a septum 110 (Figures 4-5)." However, Schurr does not disclose a septum, but instead discloses an overtube 110 that is positioned to a desired location. See paragraphs [0057] and [0061] of Schurr. Therefore, even assuming *arguendo* that Deem is combinable with Schurr, not all of the elements of claim 17 are disclosed, and claim 17 is patentable over Deem in view of Schurr.

Applicant has attempted to respond to each and every rejection set forth in the Office action. Claims 1-28 remain pending in the application and reconsideration is respectfully requested. The undersigned can be reached at (310) 824-5555 to facilitate prosecution of the application.

Respectfully submitted,  
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